

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
LEONARD RAGOZIN	:	DETERMINATION
	:	DTA NO. 809709
for Redetermination of a Deficiency or for	:	
Refund of New York State and New York City	:	
Personal Income Taxes under Article 22 of the	:	
Tax Law and the New York City Administrative	:	
Code for the Year 1987.	:	

Petitioner Leonard Ragozin, 465 West 23rd Street, Apt. 2A, New York, New York 10011, filed a petition for redetermination of a deficiency or for refund of New York State and New York City personal income taxes under Article 22 of the Tax Law and the New York City Administrative Code for the year 1987.

A hearing was held before Brian L. Friedman, Administrative Law Judge, at the offices of the Division of Tax Appeals, 500 Federal Street, Troy, New York, on January 10, 1992 at 2:45 P.M. Petitioner appeared pro se. The Division of Taxation appeared by William F. Collins, Esq. (Lawrence A. Newman, Esq., of counsel).

ISSUES

I. Whether the Division of Taxation issued a document to petitioner which stated that the deficiencies of New York State and New York City personal income taxes were based upon a Federal audit of his 1987 income tax return.

II. If so, whether the fact that a Federal audit never occurred resulted in such prejudice to petitioner as would warrant cancellation of the deficiencies of State and City personal income taxes.

FINDINGS OF FACT

On January 19, 1991, the Division of Taxation ("Division") issued a Statement of Audit Changes to Leonard Ragozin ("petitioner") which asserted a deficiency of New York State

personal income tax of \$11,141.96, plus interest, and a deficiency of New York City personal income tax of \$4,410.62, plus interest, for the year 1987. On page two of the Statement of Audit Changes, the following explanation was set forth:

"AS AUTHORIZED BY SECTION 6103(D) OF THE INTERNAL REVENUE CODE, WE HAVE OBTAINED FROM THE INTERNAL REVENUE SERVICE THE AMOUNTS SHOWN ON YOUR FEDERAL TAX RETURN. THE ADJUSTMENT(S) SHOWN BELOW ARE BASED ON DISCREPANCIES FOUND WHEN WE COMPARED THE FEDERAL INFORMATION WITH YOUR NEW YORK RETURN.

"THE STARTING POINT FOR COMPUTING YOUR NEW YORK TAX IS FEDERAL ADJUSTED GROSS INCOME. YOUR TAX HAS BEEN RECOMPUTED AS SHOWN.

"THE ADDITIONAL TAX ON UNEARNED INCOME HAS BEEN RECOMPUTED.

"INTEREST IS DUE FOR LATE PAYMENT OR UNDERPAYMENT AT THE APPLICABLE RATE. INTEREST IS MANDATORY UNDER THE NEW YORK STATE TAX LAW.

"IF YOU HAVE ANY QUESTIONS ABOUT THIS NOTICE, CALL (518)457-4765. PLEASE REFER TO THE ASSESSMENT NUMBER, AS SHOWN ABOVE, WHEN CALLING OR WRITING. TO AVOID ADDITIONAL INTEREST, THE TOTAL DUE SHOULD BE PAID WITHIN 10 DAYS."

Pages one through three of the Statement of Audit Changes set forth the computations upon which the deficiencies were based.

On February 2, 1991, petitioner sent a letter to the Division which stated as follows:

"The enclosed assessment states that 'Based upon a Federal Audit of your 1987 income tax, the following adjustments have been made'

"There was no Federal audit of my 1987 taxes."

On February 21, 1991, the Tax Compliance Division - Central Office issued a Correspondence Acknowledgement Notice (Form DTF-991) which informed petitioner that correspondence had been received from him and that no further collection or enforcement action would be taken until the issues raised had been resolved.

On April 5, 1991, the Division issued a Notice of Deficiency to petitioner in the amount of \$15,552.58 (\$11,141.96 State personal income tax and \$4,410.62 City personal income tax), plus interest, for a total amount due of \$20,071.13 for the year 1987.

In an envelope postmarked May 20, 1991, petitioner sent to the Tax Compliance Division a copy of the Notice of Deficiency on which he wrote, in red ink, "Please send me the detailed computation. I can't find it."

By letter to petitioner dated October 28, 1991, the Processing and Revenue Management Division enclosed a copy of petitioner's 1987 tax return along with copies of the Statement of Audit Changes and Notice of Deficiency.

On June 27, 1991, the Division of Tax Appeals received a petition (Form TA-10) from petitioner in which he contended, on page two thereof, that there was no valid justification provided for the assessment. Attached to the petition was a copy of the aforementioned Notice of Deficiency.

Both prior to and at the hearing held herein, the Division's representative asked petitioner to provide him with a copy of his 1987 Federal income tax return in order to attempt to resolve the discrepancy between the income reported on the Federal return and that reported on his State return. Petitioner refused to provide his Federal return and also refused, at the hearing, to address the substantive issues regarding the deficiencies despite being advised by the Administrative Law Judge that this was the proper forum in which to do so and, in addition, of the possible consequences of his refusal. Petitioner, nevertheless, chose solely to contend that the deficiencies must be cancelled because the Division stated that the deficiencies were based upon a Federal audit which, petitioner stated, never occurred.

SUMMARY OF PETITIONER'S POSITION

Petitioner contends that he received a bill from the Division, dated January 19, 1991, along with a letter of explanation which indicated that the basis of the deficiencies of State and City income tax was a Federal audit of his 1987 return which, he states, never occurred. Petitioner states that it was this bill and letter which he sought from the Division (see, Finding of Fact "5"), but that the Division will not provide him with a copy because it states an invalid basis for the deficiencies. Petitioner further states that he did not receive the Statement of Audit Changes (also dated January 19, 1991) but, instead, received a bill and letter from the Division.

Petitioner contends that the Division, in lieu of asking him questions concerning the discrepancies between his Federal and State income tax returns for 1987 or summoning him to an audit, merely issued the Notice of Deficiency to prevent the expiration of the statute of limitations. Absent production by the Division of this bill and letter which was based on error (the existence of a Federal audit of petitioner's 1987 return), the deficiencies must be cancelled.

CONCLUSIONS OF LAW

A. Where the Division determines that a deficiency of income tax exists, the law requires only that a Notice of Deficiency be issued (Tax Law § 681[a]). As the Tax Appeals Tribunal stated in Matter of Houser (Tax Appeals Tribunal, May 5, 1988):

"The Statement of Audit Changes is not a form required by statute and there is no provision in the Tax Law which prohibits the Division from revising such a statement."

B. There is no requirement to request and examine books and records before issuing a Notice of Deficiency to assert a deficiency of income tax (Matter of Giuliano v. Chu, 135 AD2d 893, 521 NYS2d 883). All that is required is that there be a rational basis for the issuance of the Notice of Deficiency (see, Matter of Fortunato, Tax Appeals Tribunal, February 22, 1990) and, by virtue of the discrepancy between the income reported on petitioner's Federal and State returns for 1987, it must be determined that a rational basis did exist for the issuance of the Notice of Deficiency herein.

C. In the present matter, petitioner alleges that he received a bill and a letter from the Division which advised him that the asserted deficiencies of State and City income taxes were based upon a nonexistent Federal audit of his 1987 tax return. He contends that such correspondence was dated January 19, 1991 which, coincidentally, was also the date of the Statement of Audit Changes, a document which petitioner stated, at the hearing, he did not receive. It must also be pointed out that the Statement of Audit Changes, in addition to bearing the same date, also contained references to the Internal Revenue Service and to a specific section of the Internal Revenue Code. Petitioner maintains, however, that he received a different piece of correspondence from the Division.

Admittedly, petitioner lost this bill and letter and, on May 20, 1991, he unsuccessfully attempted to obtain another copy. Since petitioner cannot produce and thereby prove the existence of these documents, their issuance by the Division must be questioned. But assuming, arguendo, that the Division did issue a tax bill with a letter explaining that the deficiencies were based upon a Federal audit, what was the prejudicial effect on petitioner? The answer must, clearly, be that there was no prejudice at all.

Petitioner does not contend that the calculation of the deficiencies was erroneous in any way. In fact, he refused, at the hearing, to introduce any evidence or explanation as to why there existed a discrepancy between the income he reported on his Federal return and the income reported on his State return. He does not contend that the statutory notice, i.e., the Notice of Deficiency, contained any errors. His position is simply that the Division's erroneous reference to a nonexistent Federal audit invalidates the determination of a deficiency of State and City income taxes. Based upon the questionable existence of the documents which petitioner maintains he received from the Division and the unquestionable lack of prejudicial effect on petitioner were it to be found that such documents were, in fact, issued, petitioner's position must be rejected.

D. The petition of Leonard Ragozin is denied and the Notice of Deficiency issued to petitioner on April 5, 1991 is sustained in its entirety.

DATED: Troy, New York
October 8, 1992

/s/ Brian L. Friedman
ADMINISTRATIVE LAW JUDGE